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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,386	06/03/2005	Manel Torres	08940004AA	4379
30743 7590 05/12/2010 WHITHAM, CURTIS & CHRISTOFFERSON & COOK, P.C. 11491 SUNSET HILLS ROAD SUITE 340 RESTON, VA 20190				
EXAMINER JOHNSON, JENNA LEIGH				
ART UNIT		PAPER NUMBER		
1786				
MAIL DATE		DELIVERY MODE		
05/12/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/517,386

Applicant(s)

TORRES ET AL.

Examiner

Jenna-Leigh Johnson

Art Unit

1786

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 14-24 is/are pending in the application.
- 4a) Of the above claim(s) 17-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 14-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 25, 2009 has been entered.

Response to Amendment

2. The Amendment submitted on November 25, 2009, has been entered. Claims 12, 13, and 25 - 30 have been cancelled. Claim 1 has been amended. Therefore, the pending claims are 1 - 11 and 14 - 24. Claims 17 - 24 are withdrawn from consideration as being drawn to a nonelected invention.

3. The cancellation of claims 12 and 13 is sufficient to render moot the rejections to those claims set forth in the previous Office Action.

4. The declaration under 37 CFR 1.132 filed December 14, 2009 is insufficient to overcome the rejection of claims 1 - 11 and 14 - 16 based upon Laurent (EP 0165880) as set forth in the last Office action because: The declaration details that water, and not other solvents that would be able to dissolve the binder and fiber components, would be the preferred solvent for those having ordinary skill in the art because of environmental, monetary and supply considerations. However, the question is whether one of ordinary skill in the art would have found it obvious to substitute one diluent, i.e., water, for other diluents with similar chemical structures. Or does using other known diluents produce unexpected results. First, based on the record, one of ordinary skill in the art would understand various diluents and their properties. Further, it is known that diluents with similar structures, i.e., polar diluents, would be able to dissolve similar materials. Thus, it would have been obvious to one having ordinary skill in the art that similar diluents such as alcohols methanol and ethanol, which have polar -OH end groups like water, could be

substituted for water diluents. And while water might be the most preferred diluent because of monetary or supply considerations, that does not mean that those with skill in the art would not readily understand that if water were not used as that diluent that other solvents with similar structures could not be used as the diluents. Thus, the applicants claimed invention is still considered to be an obvious variant of the prior art, even though it is not the most preferred solvent, using another known solvent would produce a predictable result, i.e., a similar product wherein the claimed binder and fiber are dissolved in the diluent to form a composition. Thus, the use of a different diluent, as claimed, is not considered to produce a patentably distinct product since the applicant has not shown that the product would have any unexpected results by using a different known diluent.

Further, it is known that the language drawn to the use of the composition to produce a fabric, is considered intended use of the composition and is not given patentable weight with respect to the composition itself. The composition taught by Laurent is capable of being sprayed, and once the diluent evaporates, it would produce a group of fibers bonded together by a binder against the surface on which it is sprayed. Thus, it could be used to produce a fabric as well. Therefore, the rejection is maintained.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. Claims 1 - 6, 10, 11, and 14 - 16 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Laurent (EP 0165880) for the reasons of record.
7. Claims 7 - 9 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Laurent in view of O'Connell (EP 0083960) for the reasons of record.

Response to Arguments

8. Applicant's arguments filed November 25, 2009 have been fully considered but they are not persuasive, for the reasons set forth above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Johnson whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Wednesday (8:30 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Tarazano can be reached on (571) 272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jlj
May 10, 2010

/Jenna-Leigh Johnson/
Primary Examiner, Art Unit 1786